

REMARKS

An early examination on the merits of all claims now pending in the above-identified patent application (i.e., Claims 26-72), and declaration of an interference with the corresponding claims patented in U.S. Patent No. 6,692,354, on February 17, 2004, are respectfully requested in view of the foregoing amendments and the following remarks.

At the outset, Applicant wishes to thank the Examiner for his allowance of Claims 40-65, earlier copied from U.S. Patent No. 6,692,354, as suggested by the Examiner.

In the second Office Action, aside from allowing Claims 40-65, the Examiner had rejected: (1) Claims 16-37 and 39 as being anticipated, pursuant to 35 U.S.C. §102(b), by Jones et al., U.S. Patent No. 4,861,041; and (2) Claims 38 and 66-72 as being anticipated, pursuant to 35 U.S.C. §102(e), by Jones et al., U.S. Patent No. 5,377,973, having an actual filing date of February 14, 1994, and claiming continuation-*in-part* status (but, evidently, not "straight" continuation status) from an earlier series of applications, thereby indicating the Examiner's reliance upon subject matter not clearly disclosed in the earlier applications/patents by Jones et al.

In reply to the Examiner's anticipation rejection of Claims 16-37 and 39, Applicant has cancelled Claims 16-25 and has amended independent Claim 26 by incorporating therein the

subject matter of dependent Claim 38 (thereby effectively incorporating the limitation of Claim 38 into dependent Claims 27-37 and 39; Claim 38 has been cancelled.)

Applicant respectfully reserves the right to re-enter the claims now being cancelled in either this prosecution, or in a separately filed continuation, at which time Applicant will address the merits of the Examiner's anticipation rejection applying Jones et al., U.S. Patent No. 4,861,041.

Applicant respectfully submits that he has the right to re-enter, or again copy from Tracy et al., U.S. Patent Application Publication No. 2002/0151342 A1, published October 17, 2002, the subject matter of cancelled, or amended, Claims 16-37 and 39, notwithstanding the statutory one-year bar of 35 U.S.C. §135(b), because the subject matter of Claims 16-37 and 39 was first copied "prior to" the "critical date" of October 17, 2003, as set by 35 U.S.C. §135(b)(2), In re Berger, 279 F.3d 975, 61 USPQ2d 1523, 1527 (Fed. Cir. 2002) ("To establish entitlement to the earlier effective date of existing claims for purposes of the one-year bar of 35 U.S.C. §135(b), a party must show that the later filed claim does not differ from an earlier claim in any 'material limitation.' * * * If all material limitations of the copied claim are present in, or necessarily result from, the limitations of the prior claims, then the copied claim is entitled to the earlier filing date of the prior claims for purposes

of satisfying 35 U.S.C. §135(b)."), citing, Corbett v. Chisholm, 568 F.2d 759, 765-766, 196 USPQ 337, 342 (C.C.P.A. 1977). See, also, Cryns v. Musher, 34 CCPA 963, 161 F.2d 217, 73 USPQ 290 (1947) (Held: If copied claims were copied "prior to" the "critical date," then their subsequent cancellation and later re-entry after the critical date would not be barred by 35 U.S.C. §135(b); In re Tanke, 41 CCPA 919, 213 F.2d 551, 102 USPQ 83 (1954).

Accordingly, Applicant respectfully states that the current cancellation, or amendment, of Claims 26-37 and 39 should be viewed as being without prejudice to Applicant's right to later prosecute the subject matter of such claims, irrespective of 35 U.S.C. §135(b)(2).

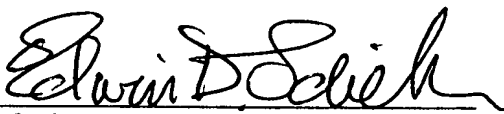
Concerning the 35 U.S.C. §102(e) anticipation rejection of Claims 38 (now Claim 26) and 66-72, Applicant's Australian priority claim of August 27, 1993, antedates the actual filing date of Jones et al., U.S. Patent No. 5,377,973, which is February 14, 1994, and, since it would appear that the subject matter cited to by the Examiner in the §102(e) anticipation rejection is not found in the earlier Jones et al. patents, Applicant respectfully requests withdrawal of the Examiner's 35 U.S.C. §102(e) anticipation rejection of Claims 38 and 66-72, and allowance of Claims 26-37 and 39, as now amended by Applicant, as well as Claims 66-72. (Claim 69 has been amended to correct the typographical error noted by the

Examiner in the second Office Action, at page 2.)

Applicant therefore respectfully submits that Claims 26-37, 39 and 66-72 are now in condition for allowance and, along with allowed Claims 40-65 (representing all claims now pending in Applicant's patent application), an appropriate declaration of an interference with the corresponding claims of U.S. Patent No. 6,692,354, at an early date, is respectfully requested and earnestly solicited.

Respectfully submitted,

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The Commissioner is hereby authorized to charge the Deposit Account of Applicant's Attorney, Account No. 19-0450, for any additional fees which may be due in connection with the prosecution of the present application, but which have not otherwise been provided for.